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CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 2098**

**Introduced by Assembly Member Miller Members Miller, Jeffries,  
and Bonnie Lowenthal**

**(Principal coauthors: Assembly Members Garrick and John A. Pérez)**

*(Principal coauthors: Senators Correa, Dutton, Emmerson,  
Hollingsworth, and Huff)*

**(Coauthors: Assembly Members Adams, Anderson, Arambula, Bass,  
Bill Berryhill, Tom Berryhill, Bradford, Buchanan,  
Charles Calderon, Carter, Conway, Cook, Coto, Davis, Fletcher,  
Fong, Fuller, Gaines, Galgiani, Gilmore, Hagman, Hall, Hill,  
Knight, Logue, Ma, Mendoza, Nestande, Niello, Nielsen, Norby,  
V. Manuel Pérez, Portantino, Silva, Smyth, Solorio,  
Audra Strickland, Torlakson, Torres, Tran, and Villines)**

*(Coauthor: Senator Ducheny)*

February 18, 2010

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An act to amend Section ~~130244~~ of the Public Utilities Code, relating  
to transportation *6802 of the Public Contract Code, relating to public  
contracts*, and declaring the urgency thereof, to take effect immediately.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2098, as amended, Miller. Riverside County Transportation  
Commission: transportation projects: contracts.

*Existing law, until January 1, 2014, allows certain state and local transportation entities, if authorized by the California Transportation Commission, to use a design-build process for contracting on transportation projects, as specified.*

*This bill would authorize the Riverside County Transportation Commission, if authorized by the commission, to utilize this design-build procurement process for the State Route 91 Corridor Improvements Project on the state highway system. The bill would make the Department of Transportation responsible for the performance of construction inspection services for the project, as specified, and would require the commission to report on the progress of the project and related matters to specified legislative committees.*

~~Existing law authorizes the Riverside County Transportation Commission to impose tolls for 50 years on transportation facilities on its portion of State Highway Route 91, subject to extension beyond that time if reauthorized by the Legislature, and authorizes toll revenues to be used for capital and operating expenses of the facilities, including debt service, and for related transportation purposes in the Route 91 corridor. Existing law authorizes the commission to issue bonds for a transportation project, as defined, on State Highway Route 91 and requires reversion of the transportation facilities to the Department of Transportation after the bonds are repaid unless tolls have been reauthorized by the Legislature.~~

~~This bill would authorize the commission to procure services and award and enter into agreements, including agreements for design and construction for the transportation project utilizing the best value design-build method of procurement, as defined.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.~~

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 6802 of the Public Contract Code is
- 2     amended to read:
- 3     6802. (a) Subject to the limitations of this chapter, a local
- 4     transportation entity, if authorized by the commission, may utilize
- 5     the design-build method of procurement for up to five projects

1 that may be for local street or road, bridge, tunnel, or public transit  
2 projects within the jurisdiction of the entity.

3 (b) Subject to the limitations of this chapter, the department, if  
4 authorized by the commission, may utilize the design-build method  
5 of procurement for up to 10 state highway, bridge, or tunnel  
6 projects.

7 (c) (1) *In addition to the projects authorized pursuant to*  
8 *subdivisions (a) and (b), and subject to the limitations of this*  
9 *chapter, the Riverside County Transportation Commission, if*  
10 *authorized by the commission, may utilize design-build*  
11 *procurement for the State Route 91 Corridor Improvements Project*  
12 *on the state highway system.*

13 (2) *Notwithstanding any other provision of this chapter, the*  
14 *department shall be the agency responsible for the performance*  
15 *of construction inspection services for the project authorized*  
16 *pursuant to this subdivision. Construction inspection services for*  
17 *the project authorized pursuant to this subdivision include, but*  
18 *are not limited to, surveying, testing the materials, verification*  
19 *testing, monitoring of environmental compliance, quality control*  
20 *inspection, and quality assurance audits. The construction*  
21 *inspection duties and responsibilities shall include a direct*  
22 *reporting relationship between the inspectors and senior*  
23 *department engineers responsible for all inspectors and*  
24 *construction inspection services. The senior department engineer*  
25 *responsible for construction inspection services shall be*  
26 *responsible for the acceptance or rejection of the work.*

27 (3) *Notwithstanding any other provision of law, for the project*  
28 *authorized pursuant to this subdivision the department shall retain*  
29 *the authority to stop the contractor's operation wholly or in part*  
30 *and take appropriate action when public safety is jeopardized.*  
31 *The department shall ensure that public safety and convenience*  
32 *is maintained whenever work is performed under an encroachment*  
33 *permit within the state highway right-of-way, including, but not*  
34 *limited to, work performed that includes lane closures, signing,*  
35 *work performed at night, detours, dust control, temporary*  
36 *pavement quality, crash cushions, temporary railings, pavement*  
37 *transitions, falsework, shoring, and delineation. The department*  
38 *shall regularly inspect the job sites for safety compliance and any*  
39 *possible deficiencies. If any deficiency is observed, a written notice*  
40 *shall be sent to the resident engineer to correct the deficiency.*

1 *Once the deficiency is corrected, a written notice describing the*  
2 *resolution of the deficiency shall be sent to the department and*  
3 *documented.*

4 *(4) The department may use department employees or*  
5 *consultants to perform the services described in this subdivision,*  
6 *consistent with Article XXII of the California Constitution.*  
7 *Department resources necessary for the performance of those*  
8 *services, including personnel requirements, shall be included in*  
9 *the department's capital outlay support program for workload*  
10 *purposes in the annual Budget Act.*

11 *(5) Not later than the first day of July that occurs two years*  
12 *after a design-build contract is awarded, and each July 1 thereafter*  
13 *until the project is completed, the Riverside County Transportation*  
14 *Commission shall submit a report on the progress of the project*  
15 *and compliance with this section to the legislative policy*  
16 *committees having jurisdiction over transportation matters.*

17 *SEC. 2. This act is an urgency statute necessary for the*  
18 *immediate preservation of the public peace, health, or safety within*  
19 *the meaning of Article IV of the Constitution and shall go into*  
20 *immediate effect. The facts constituting the necessity are:*

21 *In order to provide improved motorist safety, reduced traffic*  
22 *congestion, and increased traffic mobility on the state's highways*  
23 *at the earliest possible time, and the associated economic benefits,*  
24 *it is necessary for this act to take effect immediately.*

25 ~~SECTION 1. The Legislature finds and declares all of the~~  
26 ~~following:~~

27 ~~(a) Existing law authorizes the Riverside County Transportation~~  
28 ~~Commission to construct a new highway and transit facility on~~  
29 ~~State Highway Route 91 in Riverside County and to impose tolls~~  
30 ~~for the use of that new facility as the means to finance the~~  
31 ~~development, construction, and operation of capital improvements~~  
32 ~~on that corridor.~~

33 ~~(b) Estimated costs for planned capital improvements for State~~  
34 ~~Highway Route 91 total over \$1.2 billion, resulting in over 18,000~~  
35 ~~middle class jobs.~~

36 ~~(c) The Riverside County Transportation Commission will bear~~  
37 ~~all financial risk associated with the project and will be obligated~~  
38 ~~to bondholders for the next 65 years, with no financial risk to the~~  
39 ~~state.~~

1 ~~(d) Best value design-build is the only procurement method to~~  
2 ~~obtain cost and schedule certainty that will achieve investor~~  
3 ~~confidence to enable the project to be constructed.~~

4 ~~(e) A best value design-build contract will accelerate job~~  
5 ~~creation, congestion relief, and economic productivity benefits~~  
6 ~~associated with the improvements of the State Highway Route 91~~  
7 ~~corridor by at least three years, all while preserving environmental~~  
8 ~~protections and processes under the California Environmental~~  
9 ~~Quality Act (CEQA) and the National Environmental Policy Act~~  
10 ~~(NEPA).~~

11 ~~(f) State Highway Route 91 improvements are part of the state~~  
12 ~~and federally approved regional transportation plan for the Southern~~  
13 ~~California Association of Governments region and are necessary~~  
14 ~~for the southern California region to achieve air quality conformity~~  
15 ~~pursuant to the Clean Air Act.~~

16 ~~(g) The commission is a public agency governed by a board of~~  
17 ~~31 locally elected officials and an ex officio member representing~~  
18 ~~the Department of Transportation that is required to adhere to~~  
19 ~~statutory competitive bidding requirements for all contracts.~~

20 ~~(h) Existing law requires the establishment of an advisory~~  
21 ~~committee for the State Highway Route 91 corridor comprised of~~  
22 ~~representatives of the commission, the Orange County~~  
23 ~~Transportation Authority, San Bernardino Associated~~  
24 ~~Governments, and the Department of Transportation.~~

25 ~~(i) Existing law requires the commission to conduct an annual~~  
26 ~~audit of the toll facility on State Highway Route 91 and to~~  
27 ~~undertake certain public participation measures.~~

28 ~~(j) Therefore, it is the intent of the Legislature to provide the~~  
29 ~~Riverside County Transportation Commission with direct statutory~~  
30 ~~authority to implement the State Highway Route 91 capital~~  
31 ~~improvement project using the best value design-build method of~~  
32 ~~procurement.~~

33 ~~SEC. 2. Section 130244 of the Public Utilities Code is amended~~  
34 ~~to read:~~

35 ~~130244. (a) For the purposes of this section, the following~~  
36 ~~terms apply:~~

37 ~~(1) "Authority" means the Orange County Transportation~~  
38 ~~Authority.~~

1     ~~(2) “Best value” means a value determined by objective criteria,~~  
2     ~~including, but not limited to, price, features, functions, life-cycle~~  
3     ~~costs, and other criteria deemed appropriate by the commission.~~

4     ~~(3) “Bonds” means bonds, notes, or other evidences of~~  
5     ~~indebtedness authorized to be issued pursuant to paragraph (4) of~~  
6     ~~subdivision (c).~~

7     ~~(4) “Commission” means the Riverside County Transportation~~  
8     ~~Commission.~~

9     ~~(5) “Department” means the Department of Transportation.~~

10    ~~(6) “Design-build” means a procurement process in which both~~  
11    ~~the design and construction of a project are procured from a single~~  
12    ~~entity.~~

13    ~~(7) “Franchise agreement” means the franchise agreement~~  
14    ~~assigned to the authority pursuant to subdivision (c) of Section~~  
15    ~~130240.~~

16    ~~(8) “Transportation facilities” means one or more of the~~  
17    ~~following on State Highway Route 91 between the Orange and~~  
18    ~~Riverside County line to the west and State Highway Route 15 to~~  
19    ~~the east: (A) general purpose toll lanes; (B) lanes or facilities where~~  
20    ~~the tolls may be levied and may vary according to levels of~~  
21    ~~congestion anticipated or experienced or according to the~~  
22    ~~occupancy of the vehicle; and (C) facilities or lanes utilizing~~  
23    ~~combinations of or variations on (A) or (B), or other strategies the~~  
24    ~~commission may determine appropriate on a facility-by-facility~~  
25    ~~basis.~~

26    ~~(9) “Transportation project” means the planning, design,~~  
27    ~~development, financing, construction, reconstruction, rehabilitation,~~  
28    ~~improvement, acquisition, lease, operation, or maintenance, or any~~  
29    ~~combination of these, with respect to tolled and nontolled facilities,~~  
30    ~~structures, onramps, connector roads, bridges, and roadways that~~  
31    ~~are on, necessary for, or related to the construction or operation~~  
32    ~~of State Highway Route 91 between the Orange and Riverside~~  
33    ~~County line to the west and State Highway Route 15 to the east.~~

34    ~~(b) Pursuant to subdivision (l) of Section 130240, the authority~~  
35    ~~may amend, assign, or terminate the Riverside County portion of~~  
36    ~~the franchise agreement in the interest of advancing the~~  
37    ~~transportation project described in paragraph (9) of subdivision~~  
38    ~~(a). The department, upon request of the authority, shall approve~~  
39    ~~an amendment to the franchise agreement to eliminate any portion~~

1 of State Highway Route 91 within Riverside County from the  
2 franchise agreement.

3 (e) (1) The commission shall have the authority to set, levy,  
4 and collect tolls, user fees, or other similar charges payable for  
5 use of the transportation facilities, and any other incidental or  
6 related fees or charges, in amounts as required for the following  
7 expenditures relative to the transportation facilities as defined in  
8 paragraph (8) of subdivision (a) and for purposes of paragraph (2):

9 (A) Capital outlay, including the costs of design, construction,  
10 right-of-way acquisition, and utility adjustment.

11 (B) Operations and maintenance, including, but not limited to,  
12 toll collection and enforcement.

13 (C) Repair and rehabilitation.

14 (D) Indebtedness incurred, including related financing costs.

15 (E) Reserves.

16 (F) Administration, which shall not exceed 3 percent of toll  
17 revenues and associated facility revenues.

18 (2) Excess toll revenues beyond the expenditure needs of  
19 paragraph (1) may be expended for the following purposes:

20 (A) To enhance transit service designed to reduce traffic  
21 congestion on State Highway Route 91 or to expand travel options  
22 along the State Highway Route 91 corridor. Revenues expended  
23 under this subparagraph may be used to maintain the enhanced  
24 transit service. Eligible expenditures include, but are not limited  
25 to, transit operating assistance, the acquisition of transit vehicles,  
26 improvements to commuter rail traveling between Riverside and  
27 Orange Counties, and those transit capital improvements otherwise  
28 eligible to be funded under the State Transportation Improvement  
29 Program pursuant to Section 164 of the Streets and Highways  
30 Code.

31 (B) To make operational or capacity improvements designed  
32 to reduce congestion or improve the flow of traffic on State  
33 Highway Route 91. Eligible expenditures may include any phase  
34 of project delivery to make capital improvements to onramps,  
35 connector roads, roadways, bridges, or other structures that are  
36 related to the tolled and nontolled facilities on State Highway  
37 Route 91 between the Orange and Riverside County line to the  
38 west and State Highway Route 15 to the east.

39 (3) The commission, in consultation with the authority and the  
40 department, shall issue a plan of transportation improvements for

1 the State Highway Route 91 corridor, which shall include projected  
2 costs, the use of toll revenues, and a proposed completion schedule.  
3 This plan shall be updated annually. The plan and each annual  
4 update shall be made available for public review and comment no  
5 less than 30 days prior to adoption by the commission.

6 (4) The commission is authorized to issue bonds to finance the  
7 costs of the transportation project, including the costs of issuing  
8 the bonds and paying credit enhancement and other fees related  
9 to the bonds, which bonds are payable from the tolls authorized  
10 pursuant to paragraph (1), sales tax revenues, development impact  
11 fees, federal grant funds, or any other source of revenues available  
12 to the commission that may be used for these purposes. The bonds  
13 may be sold pursuant to the terms and conditions set forth in a  
14 resolution adopted by the governing board of the commission.  
15 Bonds shall be issued pursuant to a resolution adopted by a  
16 two-thirds vote of the commission. Any bond issued pursuant to  
17 this paragraph shall contain on its face a statement to the following  
18 effect:

19 —

20 “Neither the full faith and credit nor the taxing power of the  
21 State of California is pledged to the payment of principal or  
22 interest of this bond.”

23 —

24 (5) The department is authorized to enter into any lease,  
25 easement, permit, or other agreement with the commission  
26 necessary to accomplish the purposes of this section.

27 (6) The commission shall have the authority to impose tolls for  
28 use of the transportation facilities for 50 years following the  
29 opening of the transportation facilities for public use, after which  
30 time the commission shall have no further authority to impose or  
31 to collect a toll for use of transportation facilities on State Highway  
32 Route 91, unless reauthorized by the Legislature. The transportation  
33 facilities shall revert to the department after the bonds issued  
34 pursuant to this section are paid off in their entirety, unless tolls  
35 have been reauthorized by the Legislature. Upon reversion, the  
36 facilities shall be delivered to the department in a condition that  
37 meets the performance and maintenance standards established by  
38 the department.

39 (7) The commission shall make available for public review and  
40 comment the toll schedule and any subsequent proposed changes



1 to the schedule no less than 30 days prior to the adoption by the  
2 commission of a toll schedule.

3 ~~(d) The powers granted to the commission pursuant to this~~  
4 ~~section shall be supplemental and in addition to any other authority~~  
5 ~~of the commission to undertake the transportation project. The~~  
6 ~~commission may procure services and award and enter into~~  
7 ~~agreements, including agreements for design and construction for~~  
8 ~~the transportation project utilizing the best value design-build~~  
9 ~~method of procurement, notwithstanding any other requirement~~  
10 ~~of state law or regulation or county ordinance or regulation relating~~  
11 ~~to public bidding or other procurement procedures or otherwise~~  
12 ~~applicable to public works, services, or utilities.~~

13 ~~(e) This section shall not prevent the department or any local~~  
14 ~~agency from constructing facilities within the State Highway Route~~  
15 ~~91 corridor that compete with the transportation project, and in no~~  
16 ~~event shall the commission be entitled to compensation for the~~  
17 ~~adverse effects on toll revenues due to those facilities.~~

18 ~~(f) If any provision of this section or the application thereof is~~  
19 ~~held invalid, that invalidity shall not affect other provisions or~~  
20 ~~applications of this section that can be given effect without the~~  
21 ~~invalid provision or application, and to this extent the provisions~~  
22 ~~of this section are severable.~~

23 ~~(g) This section shall not apply to State Highway Route 91~~  
24 ~~between the Orange and Riverside County line and State Highway~~  
25 ~~Route 15 unless the authority amends or partially assigns the~~  
26 ~~restated franchise agreement, as amended, between the department~~  
27 ~~and the authority to exclude that portion of State Highway Route~~  
28 ~~91 from the restated franchise agreement, as amended.~~

29 SEC. 3. ~~This act is an urgency statute necessary for the~~  
30 ~~immediate preservation of the public peace, health, or safety within~~  
31 ~~the meaning of Article IV of the Constitution and shall go into~~  
32 ~~immediate effect. The facts constituting the necessity are:~~

33 ~~In order to provide improved motorist safety, reduced traffic~~  
34 ~~congestion, and increased traffic mobility on the state's highways~~  
35 ~~at the earliest possible time, and the associated economic benefits,~~  
36 ~~it is necessary for this act to take effect immediately.~~

1		_____
2	CORRECTIONS:	
3	Heading—Line 13.	
4		_____